DOCUMENT RESUME

ED 146 504 CG 011 938

AUTHOR Sosin, Michael
TITLE Procedural Reform and the Reduction of Discretion: The Case of the Juvenile Court.
INSTITUTION Wisconsin Univ., Madison. Inst. for Research on Poverty.
SPONS AGENCY Department of Health, Education, and Welfare, Washington, D.C.; National Inst. for Juvenile Justice and Delinquency Prevention (Dept. of Justice/LEAA), Washington, D.C.; National Inst. of Law Enforcement and Criminal Justice (Dept. of Justice/LEAA), Washington, D.C.
PUB DATE Feb 77
GRANT 75-N1-99-0010; 76-JN-99-0001; 76-N1-99-0009
NOTE 40p.

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS Court Litigation; Delinquency; *Delinquents; *Due Process; *Equal Protection; *Justice; *Juvenile Courts

ABSTRACT

The issue of controlling discretion in large public institutions is a crucial one in modern society, and procedural legal reforms are often viewed as one tactic of control. Using due process guarantees in juvenile courts as the substantive issue, this paper tests the utility of procedural reform in reducing discretion. Results indicate that procedural reform in the juvenile court has a quite limited impact. Few changes in the role of legal actors or in case outcomes result from the mandates in juvenile courts. Further, the results suggest that procedural guarantees may have minimal impact in other organizational contexts. Four mechanisms (Impact by definition, Impact by atmosphere, Impact by constraint, Impact by a change in Decision-Rules) may insure that compliance reduces discretion, and it is argued that procedural reforms can seldom successfully make use of these mechanisms. (Author)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED146504

#399-77

INSTITUTE FOR RESEARCH ON POVERTY DISCUSSION PAPERS

PROCEDURAL REFORM AND THE REDUCTION OF DISCRETION: THE CASE OF THE JUVENILE COURT

Michael Sosin

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Institute for Research on Poverty
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

UNIVERSITY OF WISCONSIN-MADISON

CG 011938

Procedural Reform and the Reduction of Discretion:
The Case of the Juvenile Court

Michael Sosin

February 1977

This research was partially supported under Grant Numbers 76NI-99-0009, 75NI-99-0010, and 76JN-99-0001 from the National Institute of Law Enforcement and Criminal Justice, and the Juvenile Justice and Delinquency Prevention Operations Task Group, both in the Law Enforcement Assistance Administration, U.S. Department of Justice.

Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

This research was also supported by funds granted to the Institute for Research on Poverty of the University of Wisconsin-Madison by the Department of Health, Education, and Welfare pursuant to the provisions of the Economic Opportunity Act of 1964.

My thanks to Gayl Ness, Joseph Sanders, Rosemary Sarri, and Tony Tripodi for comments on earlier drafts of this report.

Procedural Reform and the Reduction of Discretion:
The Case of the Juvenile Court

Social scientists are increasingly aware of both the difficulty and the importance of controlling the discretion of large public agencies. The difficulty arises at least partly from the great power differentials between public institutions and individuals (Coleman, 1974). The institutions have a near monopoly on both resources and information, and individuals are often limited in both respects. Individuals cannot control public institutions because the latter hold all the cards. The importance of the issue occurs because large public institutions now are significantly involved in the lives of most individuals. According to one study (Katz, 1975), about six out of ten adults had contacts with service agencies, and one out of ten had difficulties with control agencies, within a five-year period. Modern society is a "welfare" society in which governmental contacts are part of daily life.

Considerable documentation suggests that government agencies may act in undesirable manners, especially when faced with clients with few economic, social, or political resources. Arbitrary procedures have been reported in public welfare (Piven and Cloward, 1971), mental institutions (Scheff, 1966), and courts (Blumberg, 1967). Often the quality of decision-making is at issue, as large agencies apparently often label and categorize clients in inappropriate manners (Roth, 1972). The quantity of decisions is also involved, as in reports of low rates of welfare eligibility or high rates of juvenile court and mental institution commitments.

One possible mode of reducing the discretion of public institutions involves the utilization of procedural reforms at key decision-making points. It is often argued that due process safeguards will insure that arbitrary and unfair decisions will be reduced. Selznick (1969), in fact, believes that procedural safeguards are inherent in legality itself, and that due process procedures will lead to the basic character of institutions.

The utility of procedural justice in improving public institutions is not as evident as it might seem at first. The impact of procedures demands that the legal reforms are met with compliance, and this is not always the case (Skolnick, 1966). Further, little evidence has been gathered to determine if procedures and rules actually alter the quality or quantity of decisions. It is conceivable that such reforms increase the length of hearings but do little else.

In this paper some empirical evidence will be utilized to determine the impact of due process reforms on quality and quantity of decisions. The data involve recent due process decisions in juvenile courts, and the results of the analysis suggest some generalizations concerning the effects of procedural mandates in public institutions.

1. DUE PROCESS MANDATES IN JUVENILE COURTS

With justification, the juvenile court has often been accused of engaging in considerable unfair, discretionary behavior. Courts often process youths with little regard for procedural safeguards and with little interest in the juvenile's side of the story. Courts also often base

disposition on matters of personality or capricious courtroom events, leading to numerous unnecessary commitments and formal trials (Cicourel, 1968; Platt, 1969; Emerson, 1969; Forer, 1970). Law and precedent have awarded great autonomy to juvenile judges, and that autonomy is often abused.

During the 1960s the Supreme Court recognized the existence of inequities in juvenile court contact and recommended some due process reforms. The Supreme Court decided in the 1966 Kent decision that a right to counsel and to a proper, formal hearing were necessary in waiver (to adult court) hearings. A year later the most important decision, In re Gault (1967) was handed down. In this decision the Supreme Court specifically noted the arbitrary nature of juvenile courts and the need for some national standards:

> Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure...The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure but in arbitrariness. (387 U.S. at 21)

The Court specified that four rights are required at the delinquency hearing:

1. Notice of the charges.
2. Right to counsel (including proper notification of this right).
3. Right to confront and cross-examine witnesses.
4. Right to remain silent.

Another case extended the rights of juveniles somewhat further. In re Winship (1970) declared that "proof beyond a reasonable doubt" is needed

in delinquency cases despite the argument that the juvenile court is civil rather than criminal in nature.

Clearly, Kent, Gault and Winship were expected to profoundly change the nature of the juvenile court. In Gault, the majority defended its decision partly on the grounds that treatment has not proven effective and that the court would have to reorient its concerns. Based on Supreme Court dicta and other common beliefs, it is possible to deduce at least four ways in which the mandates were expected to alter juvenile courts and reduce discretionary behavior:

1. Compliance to the mandates, given the value system prevalent in the United States, may be considered fairness and justice in itself. Allowing an individual to have counsel, informing him of rights, and using a proof beyond a reasonable doubt standard are all valued commodities.

2. The mandates should be expected to increase the input that youth and their advocates have in the process relative to the power held by others. Gault, especially, implies that the mandates are aimed at increasing the representation a juvenile obtains at the adjudication hearing. The guarantees should be expected to increase the power of defense attorneys and decrease the power held by the prosecution and the police at the hearing. But it is reasonable to assume that the mandates will also reduce the power of the judge, probation officers and probation supervisors; if due process maximizes the control of the defense attorney it should minimize the control exercised by almost everyone else.

3. While the guarantees mandated apply most directly to the adjudication stage of the hearing, it is at least conceivable that the mandates will also have an effect on other stages. Once lawyers are present in the system, for example, they may present material at disposition. Influence at disposition should also be expected to favor the juvenile more when due process mandates are obeyed.

4. Outcomes, or the quantity of decisions, may also be altered by due process mandates. In the Gault case the Supreme Court noted that arbitrary commitments were a motivation of the decision. The implication is that the mandates should be expected to reduce the number of commitments. The presence of due process mandates or active attorneys should insure that considerable and strong evidence is presented before such a drastic step is taken.

The number of formal hearings may also be reduced by the mandates. Court employees may realize that clear evidence is needed for a conviction and thus they will refer fewer cases. At the same time lawyers may be able to become active in some courts to prevent formal hearings from occurring.[1]

2. DATA AND METHODS

In this paper the four types of impact will be assessed using data from a national sample of juvenile courts (National Assessment of Juvenile Corrections, 1976). The sample is a random representation of courts in counties with a population of over 50,000 people, supplemented by a few courts added to insure an adequate representation of large

urban areas. Questionnaires were sent out to the judge, detention supervisor, court administrator, and probation officers in each of 600 sample courts in 400 countries.

Only the judge questionnaire and the administrator questionnaire are relevant for this report. Two hundred and fifty-nine judges in the random sample, and 277 judges overall, answered the questionnaire. The response rate, while reasonable for a mail sample, is less than complete. However, many courts that seemed to have jurisdiction actually did not, thus reducing the potential number of respondents. Using conservative reduction of the potential universe, the actual response rate is about 60 percent. Fewer administrators responded (226 in the random sample and 237 overall), although in this case the corrected response rate still is about 58 percent. However, much information contained in the administrator questionnaire--the case outcome information necessary in one aspect of this paper--may be gleaned from state statistics. When court statistics are added, the administrator responses increase to 378, or about 80 percent of the courts that exist. Response bias is negligible in the administrator questionnaire, while urban areas with large populations are slightly overrepresented among the judges.

Variables

The operationalizations of compliance are quite complicated and will be left for the analysis section, but the other three components of justice and fairness are operationalized in more straightforward manners. The power or influence of various actors at adjudication

and disposition comes from judges rating on a four-point scale of how much influence the referral agency (the police in 90 percent of the cases), the chief probation officer, probation or intake worker, prosecutor, judge, or defense attorney have at the two stages. Tables 1 and 2 report the mean scores across the questionnaires.

Outcome information is found on the administrator questionnaire. Administrators were asked to provide a summary of cases handled in various manners; and the rates of commitment to state agencies and the total rate of formal handling are included. The numbers are placed in percentage form to control for the effects of the number of cases.

3. ANALYSIS AND RESULTS

Compliance

One way of understanding due process involves the notion of the court as a type of conflict game. On one side stands the state as represented by the prosecution. On the other side stands the defendant and the defendant's representatives, such as parents and attorney. The judge (and jury in a few cases) represents a neutral force which sets rules of the conflict and declares the winner. In the conflict situation the prosecution tries to present its side as strongly as possible, given the rules set for conflict, and the defense tries to present its side as well. In theory, between the two sets of presentations the truth will emerge and will enable an appropriate decision to be reached.

Table 1

Influence at Adjudication

	Referral Agency	Chief Prob. Officer	Prob. Officer	Pros. Attorn.	Def. Attorn.	Judge
Mean Influence	1.58	1.93	1.98	2.20	2.39	3.88
n	253	248	246	246	247	235

Key: 1 = no influence; 2 = little influence; 3 = moderate influence; 4 = great influence.

Table 2

Influence at Disposition

	Referral Agency	Chief Prob. Officer	Prob. Officer	Pros. Attorn.	Def. Attorn.	Judge
Mean Influence	2.06	2.13	2.59	2.91	3.16	3.95
n	247	240	242	244	243	228

Key: 1 = no influence; 2 = little influence, 3 = moderate influence; 4 = great influence.

This conflict model of courts leads to one set of due process mandates, adversarial mandates. These regulations are aimed at insuring that the conflict is an equal one, especially from the perspective of the defendant. They are meant to enable the defendant and his representatives to argue a position. Thus Kent and Gault very carefully prescribe the presence of counsel who may cross-examine witnesses and confront evidence. These guarantees insure that the attorney can bring legal skills into play in the courtroom.

A second set of principles also operates within due process mandates. According to the Constitution, all individuals who come to trial have some "unalienable rights," and some due process mandates are aimed at guaranteeing them. Some such rights involve privacy. Only evidence relevant to a case should be collected so that other parts of the defendant's life will not become public knowledge. Also, rights may set up a baseline condition that determines the minimum amount of evidence necessary before the state can intervene. Rights may also involve the ability of a defendant to remain silent.

Those aspects of the three decisions involving unalienable rights may be called procedural mandates. The right to remain silent found in Gault and the need to establish proof beyond a reasonable doubt indicated in Winship are clear examples of procedural rights. The right to a trial for a waiver proceeding found in Kent also is a procedural right. Finally, provisions in Gault relating to proper notice of the charges also involve procedures that insure the basic protection of all individuals.

A second distinction among due process mandates involves an idea previously developed (Sosin, 1977), the difference between formal and full compliance. Formal compliance involves surface level acceptance of the law, while full compliance includes more serious observance of mandates. For example, the distinction involves the difference between just reading a list of charges to a defendant and insuring that the list is both complete and easily understood.

Rates of compliance in juvenile courts. Table 3 presents the average compliance to various due process mandates as reported by judges in the sample. While some of the responses stem from five-point scales, the table reports a single number for each mandate. A court was considered to comply to law only if the judge reported that he "always" complied to a mandate or "never" engaged in restrictive behavior. This decision stems from the notion that a court which occasionally violates a due process provision is in violation of law. Just as a police department that refuses to read rights to even 10 percent of its suspects misses the point of Miranda, a judge who refuses consistently to use due process safeguards misses the point of Kent, Gault, and Winship.

The items in Table 3 are divided into four components that correspond to the two distinctions developed above. Formal procedural compliance involves surface level compliance to issues of unalienable rights, while formal adversarial compliance involves surface level compliance to issues involving the conflict model of courts. Full procedural compliance and full adversarial compliance measure more complete obedience to the two types of mandates.

Table 3

Mandated Due Process

Item	Comply (percent)	N.A. (percent)	Category
Always have written notice of charges	95.6	1.1	Formal Procedural Compliance: 97 percent
Always use proof beyond reasonable doubt	95.3	1.8	
Hearing for waiver	90.1	8.0	
Always use state rules of evidence	86.9	2.2	
Right to counsel at adjudication	97.4	1.5	Formal Adversarial Compliance: 86 percent
Appointment of counsel at adjudication	85.8	2.7	
Lawyer may call witness from social report	85.9	5.8	
Right to counsel at waiver	85.8	3.0	
Appointment of counsel at waiver	76.6	3.7	
Attorney always has access to social file	71.9	2.6	
Both factural and statutory notice of charges	69.7	1.8	Full Procedural Compliance: 48 percent
Judge never has access to social file	51.8	2.9	
Only lawyer (or no one) may waive right to remain silent	20.4	2.6	
Counsel seldom appointed ("no" response)	85.0	2.6	Full Adversarial Compliance: 53 percent
Counsel always cross examines	54.3	3.3	
Counsel often calls witnesses from social reports	20.1	5.8	
Average Compliance: 70 percent	N = 277		

Formal procedural compliance involves four items, written notice of the charges, proof beyond a reasonable doubt, the occurrence of a waiver hearing, and the use of state rules of evidence at hearings. All of the items involve the basic guarantees outlined above, and each represents surface level compliance. Discounting nonresponses, the average formal procedural compliance measure receives compliance in 97 percent of the courts.

Formal adversarial compliance includes six items: the right to counsel at adjudication, the stated willingness of judges to appoint counsel at adjudication when necessary, the right to counsel at waiver hearings, the appointment of counsel at waiver hearings, the formal ability of lawyers to call witnesses mentioned in social reports, and the access of attorneys to the social file. All these items are mandated directly in the Supreme Court decisions, and all involve the adversarial court model. The key to an adversarial trial is the existence and activity of a defense attorney, and these six items involve attorneys. Formal adversarial compliance is also nearly complete; the average mandate receives compliance in 86 percent of the courts.

Full procedural compliance includes three items: the use of both factual and statutory language in notice of the charges, the access of judges to the social file at adjudication hearings, and the extent to which the lawyer waives the right to self-incrimination. In each case serious implementation of the mandates is involved. Thus, notice of the charges is only complete if it is both comprehensible and systematic, and notice given in both statutory and factual form guarantees the two conditions. The judge's access to the social file pertains to Winship;

if a judge reads the social file at adjudication hearings he is likely to use background information that does not pertain to the charge. The ability of only the lawyer to waive the right against self-incrimination is important in guaranteeing that (as was noted in our brief discussion of Miranda) the right is actually comprehended and seen as a viable alternative by the youth. While compliance to each of the three measures is quite distinct, the average compliance is slightly under 50 percent.

Full adversarial compliance contains three measures: seldom appointing counsel--coded in reverse, always cross-examining witnesses, and often (the top category) calling witnesses from social reports. The relation of these measures to full adversarial compliance should be clear. The simple right to have an attorney is not useful if lawyers are seldom appointed in practice; cross-examination and confrontation are essential to an adversarial system. In this case, too, compliance is about 50 percent.

The drop off between formal compliance and full compliance implies one crucial point. Often is is possible for courts to avoid full compliance to law by formally complying with mandates. Thus such complex issues as due process can lose a great deal of their power in the somewhat haphazard transition from mandate to implementation.

The table as a whole also demonstrates that compliance is not complete. The average mandate (averaging all items) is compiled with by 70 percent of the courts. Thus almost one-third of the mandates passed down by the Supreme Court are not implemented in an average court--results consistent with an observation study of compliance in three courts (Lefstein, Stapleton, and Teitelbaum, 1969).

Youth Input at Adjudication

As has been mentioned, the Supreme Court mandates are at least partially aimed at increasing the amount of input youth advocates have at adjudication. Specifically, the defense attorney should have more influence at this stage, while the prosecutor, referral agency, and perhaps everyone else should experience reduced influence.

Determining the effect of due process mandates on influence of individuals is made more difficult by the fact that laws can lead to change in at least two ways. First, compliance to the mandate can result in changes in court procedure and influence. Thus Gault guarantees should be expected to change patterns of interaction in courts. Second--and this is the difficulty--laws may work directly and by-pass the compliance stage. In other words, judges may perceive that the Supreme Court decisions imply more influence for defense attorneys and they might change court procedures even if they do not comply with the Supreme Court decision itself.

In this cross-sectional report it will only be possible to look at the first possibility, change as a result of compliance. This will be accomplished through the use of correlations between the overall and partial measures of compliance and the measures of influence. However, it is possible that simple correlations may be spurious, due to the propensity of certain types of courts that comply with the law more to also independently award defense attorneys higher influence. Thus controls for causes of compliance as determined elsewhere (Sosin, 1977) are also included. The causal variables include eight items (if a

judge is appointed, the time spent on juvenile matters, influence of the school on the court, influence of legal groups on the court, industrialization, community income, legitimacy, and a maintenance goal orientation), and the interaction of all but three (legitimacy, percent time in juvenile matters, and influence of schools) with the appointment status of the judge. Both simple and partial correlations will be reported, although interpretation will focus on the latter.

Results. Table 4 reports the correlations between the measures of due process and the influence of various actors at adjudication. On the whole only limited relations develop.

The referral agency experiences a slight decrease in influence as a result of overall due process. The relevant submeasure is full procedural compliance; adversarial compliance plays no role.

Probation officers and supervisors show no overall partial change in influence due to compliance. In both cases, however, formal procedural compliance is related to some reduction in influence.

Most important, all legal actors, the judge, defense attorney, and probation officers, are not affected by due process at adjudication at all, as no partial correlations are statistically significant.

Interpretation. Clearly, the most important result of the analysis is that significant relations are few. For six actors, only once does overall compliance change influence, and in this case the relationship is quite slight.

It is interesting to note, however, that the significant relations involving submeasures demonstrate the effect of procedural, and not

Table 4

Due Process Mandates and Influence at Adjudication

Influence of	Simple Correlations					Partial Correlations				
	Overall Due Process	Formal Proc. Comp.	Formal Advers. Comp.	Full Proc. Comp.	Full Advers. Comp.	Overall Due Process	Formal Proc. Comp.	Formal Advers. Comp.	Full Proc. Comp.	Full Advers. Comp.
Referral Agency	-.23* (248)	-.15* (251)	-.05 (248)	-.30* (252)	-.03 (248)	-.18* (198)	-.07 (198)	.02 (198)	-.22* (198)	-.06 (198)
Chief Probation Officer	-.24* (243)	-.26* (246)	-.14* (243)	-.22* (247)	-.03 (243)	-.07 (198)	-.16** (198)	.01 (198)	-.07 (198)	.05 (198)
Probation Officer	-.24* (241)	-.23* (244)	-.07 (241)	-.26* (245)	-.03 (241)	-.09 (196)	-.15* (196)	.04 (196)	-.11 (196)	.01 (196)
Prosecuting Attorney	.11** (242)	.06 (244)	.11** (242)	.08 (245)	.02 (242)	.09 (197)	-.02 (197)	-.04 (197)	.10 (197)	.01 (197)
Defense Attorney	.07 (243)	.04 (245)	.07 (243)	.03 (246)	.03 (243)	.00 (196)	.01 (196)	-.03 (196)	.01 (196)	.01 (196)
Judge	.06 (231)	-.01 (234)	.09 (231)	.01 (235)	.05 (231)	.04 (185)	-.08 (185)	.11 (185)	-.02 (185)	.05 (185)

*p < .05

**p < .10

adversarial, compliance on the influence of nonlegal actors. This result indicates that due process is most important at adjudication as a skill barrier. That is, the mandates make it difficult for those who do not understand legal procedures to make themselves heard. Probation workers and policemen have only limited ability to understand the new procedures, and thus are handicapped in the court.

While skills do affect those without legal training, it is perhaps surprising that the need for skills does not increase the influence of the defense attorney. This may be due to two important aspects of the juvenile court. First, many important decisions are made before adjudication at intake hearings. Here guilt or innocence is often established through confessions accomplished without aid of a lawyer. In fact, judges in only 17 percent of the courts say that defense attorneys usually make the decision regarding the right to remain silent. Attorneys have little influence at adjudication because there is not much that they can do.

There may still appear to be a contradiction between results concerning legal and nonlegal actors. The results concerning the former imply that too little occurs at adjudication to be affected by mandates, while the results concerning the latter imply that adjudication hearings do make a difference. The contradiction can be explained by the existence of another operating factor, an active judicial strategy in which potential due process effects upon the hearing are intentionally avoided. In other words, it appears that judges use information gathered at intake or by other means to intentionally avoid allowing other legal actors to experience increased influence.

The idea of an active judicial strategy stems from work of Stapleton and Teitelbaum (1972). These researchers note that the values of judges may influence the impact of legal aid projects. In a court in which judges favored legal reform the presence of legal aid lawyers led to fewer commitments and more dismissed cases. However, a resistant court experienced a backlash against legal aid lawyers. Youth represented by these special lawyers were actually commited more often once found guilty. Apparently lawyers incensed the judge in court, and the judge acted out his anger by depriving many youths of liberty.

Fragmentary data support the strategy argument in the present case. Judges were asked to rate the importance of the orientation "to restrict intervention to behaviors which are crimes for adults" in the court. Presumably a high rating of the goal indicates a commitment to due process and to lawyer activism. At high levels of support for this goal there was a significant partial correlation between the overall measure of due process and the influence of defense attorneys ($r=.21$, $n=77$, $p<.10$), while the relation is negative and not statistically significant ($r=-.09$, $n=99$) when the goal is not supported.

Disposition

Table 5 points out the effects of compliance on infuence at disposition, where the decisions are not mandated but still may have an effect. While relations are still small, surprisingly compliance has a somewhat greater effect at this stage.

Table 5

Due Process Mandates and Influence at Disposition

Influence of	Simple Correlations					Partial Correlations				
	Overall Due Process	Formal Proc. Comp.	Formal Advers. Comp.	Full Proc. Comp.	Full Advers. Comp.	Overall Due Process	Formal Proc. Comp.	Formal Advers. Comp.	Full Proc. Comp.	Full Advers. Comp.
Referral Agency	-.11** (241)	-.04 (243)	.02 (242)	-.08 (243)	-.13* (242)	-.03 (191)	.06 (191)	.09 (191)	.03 (191)	-.14** (191)
Chief Probation Officer	-.07 (238)	-.01 (242)	-.03 (239)	-.09 (242)	-.03 (239)	.12** (191)	.06 (191)	.17* (191)	-.01 (191)	.05 (191)
Probation Officer	.07 (237)	.03 (241)	.17* (238)	-.03 (241)	.02 (238)	.11 (191)	.05 (191)	.21* (191)	-.05 (191)	.04 (191)
Prosecuting Attorney	.13** (235)	.06 (239)	.08 (236)	.03 (239)	.11** (236)	.16* (189)	-.03 (189)	.04 (189)	.14** (189)	-.11 (189)
Defense Attorney	.23* (236)	.16* (240)	.14** (237)	.21* (240)	.04 (237)	.14** (190)	.06 (190)	.05 (190)	.20* (190)	-.03 (190)
Judge	-.07 (223)	-.01 (227)	.02 (224)	.01 (227)	-.15* (224)	-.07 (181)	.00 (181)	.04 (181)	.02 (181)	-.18* (181)

*p < .05

**p < .10

The referral agency experiences no overall change in influence as a result of due process mandates, although full adversarial compliance somewhat reduces influence.

Probation staff experience some increase in influence as a result of compliance. For chief probation officers the relation is statistically significant, and it is only a shade away from significance in the case of the probation staff. In both cases formal adversarial compliance is the relevant submeasure.

Legal actors also experience small effects. Both defense attorneys and prosecutors experience a small increase in influence, and full adversarial compliance is the relevant indicator. While overall compliance does not affect the judge, full adversarial compliance slightly decreases his influence.

Interpretation. Results concerning disposition indicate a few surprising pieces of information. First, mandates influence disposition slightly more than adjudication. Second, procedural measures are involved in the influence of defense attorneys and prosecutor, while adversarial ones involve nonlegal actors; the opposite arrangement might seem more likely. Some possible explanations that are consistent with previous comments may be developed.

The relative importance of the mandates at disposition probably stems from the sequential nature of trials. Actors have little effect due to the mandates at adjudication because relevant information is gathered at the previous stage, intake. However, apparently information gathered at adjudication is relevant for disposition hearings, and activities that due process promotes at the earlier stage leave their mark at the next stage.

The importance of various submeasures may also involve the issue of court stages. On the one hand, it is likely that the importance of measures of full compliance is due to the need for such complete control to alter the hearing enough to change later stages. In addition, lawyers who are too active may cause a backlash in which judges intentionally give their information less weight. Thus full adversarial compliance results in an active judicial strategy that reduces impact, while full procedural compliance does not. On the other hand, among other things, judges who are active in an adversarial fashion must try to utilize the probation staff to prove their points. It is likely that lawyers call probation officers to the stand, thus increasing their influence at disposition.

Case Outcomes

Table 6 points out the correlations between compliance and two types of dispositions. The results are obvious; due process mandates have no effect. Indeed, similar results occur even if more specific outcome categories are used.

Interpretation. The final, and perhaps most important output of a court is decisions. It is quite important, then, that due process mandates appear to have no effect on aggregate case outcomes. They do little to reduce the number of commitments, formally handled cases, or many other dispositional categories that were tested, but not reported due to a similar lack of effects.

More will be said about the matter shortly, but these results point out the most serious shortcoming of due process standards. Due

Table 6

Due Process Mandates and Aggregate Case Outcomes

Outcome	Simple Correlations					Partial Correlations				
	Overall Due Process	Formal Proc. Comp.	Formal Advers. Comp.	Full Proc. Comp.	Full Advers. Comp.	Overall Due Process	Formal Proc. Comp.	Formal Advers. Comp.	Full Proc. Comp.	Full Advers. Comp.
Formal (percent)	-.03 (218)	-.10 (222)	-.09 (220)	-.10 (222)	.07 (220)	.01 (174)	.05 (174)	-.09 (174)	.02 (174)	.04 (174)
Commit to Public Institution	.04 (176)	-.10 (177)	.04 (177)	.04 (177)	.07 (177)	.04 (140)	-.07 (140)	-.03 (140)	.09 (140)	.02 (140)

process is directly aimed at altering procedure, but not outcome. There is nothing in the law that makes it necessary for the judge to consider the additional evidence due process provides. Thus judges can follow specific procedures, let the defense attorneys have their say, and still decide cases on whatever basis they desire.

Some scattered results seem to indicate that the way in which due process mandates are utilized depends considerably on the way in which the judge decides to react. For example, one goal orientation of the court (Sosin, 1976) may be defined as a youth concern orientation, involving elements of both a desire for treatment and a desire for due process. When this goal is high, fewer commitments and more dismissals occur as a result of due process (r=.22 and .24, respectively). Further, in some courts defense attorneys have limited influence, prefering a cooptive strategy in which they work with, rather than against, the judge. In such a situation formal adversarial compliance leads to fewer commitments and fewer formal cases (r=-.31 and -.22), while full adversarial compliance leads to more formal cases (r=.14). In other words, those elements that reflect some amount of defense attorney activism that is not disruptive tend to be supported in courts that are cooptive in general, while those elements that reflect alternate orientations apparently are not supported and lead to backlash.

4. DUE PROCESS RECONSIDERED

The obvious conclusion from these results is that the effects of due process mandates are modest. First, compliance is far from complete; nearly one-third of the mandates in the existing list are not

complied with in a given court as reported by the judge, himself. Further, formal compliance is much more complete than full compliance. The most reform-oriented aspects of the mandates have received the least attention. Finally, further effects of the mandates are quite limited. In retrospect, such limited impacts may be expected. This is clear from both the standpoint of legal theory and the standpoint of juvenile court organization.

Legal Theory

Some legal theories view due process mandates in a light that deemphasizes potential social impacts. One legal view sees due process as a normative set of procedures. This perspective stresses the role of due process in making trials match societal expectations of just procedures. For example, the role of counsel and notice of the charges are important because they seem to be normatively favored in the society.

The normative approach views the adoption of due process procedures as an end in itself. The procedures are important because they represent justice. However, procedural justice need not relate to substantive justice. Procedures do not make laws more or less fair, nor do they dictate whether a case outcome is fair or not. Normative legal theorists would therefore not find a lack of social impact surprising or disturbing.

A second legal view suggests that mandates are important in improving the quality of justice involved in each hearing. This perspective considers due process a means of more efficiently distinguishing

the innocent from the guilty. For example, a quality perspective implies that defense attorneys are important because they help present additional information. The information helps the judge make a more informed decision in a specific case. Indeed, one might argue that the data call the extent to which due process improves quality into question. The mandates do not even increase the power of defense attorneys at adjudication, and increased power should relate to the way in which evidence is presented. However, if most juveniles who are brought to trial are guilty, one would expect due process to strongly influence the role of the defense attorney; there is little the defense attorney can do to improve justice at adjudication when the prosecution's side of the story is basically correct. It is at least possible that the due process mandates have increased the quality of justice.

Whatever the quality of justice in juvenile courts, certainly this perspective leads one to expect minimal social impact in terms of aggregate case outcomes or similar measures. The quality of decisions does not necessarily influence the distribution of decisions. It is conceivable that perfect justice would result in the exact same rate of dismissals as occurs without a just system, but that the specific individuals receiving a dismissal would vary. In this instance due process would be neutral to aggregate outcomes. Further, quality of justice does not involve any notion of how many commitments are appropriate or how much say a juvenile should have in his own future. Thus, this perspective also leads one to doubt the broader social impact of due process mandates.

Due Process and Juvenile Court Organization

The limited impact of due process mandates also can be explained with respect to the specific nature of the mandates as they relate to the juvenile court. The mandates, of course, merely involve a set of procedures. They can only be effective in promoting such changes as increasing the influence of defense attorneys through a complex chain of events. The procedures must be such that they force the court to alter other arrangements. Thus procedural compliance seems to change the skill requirements for influencing the court. Those individuals who do not have skills--nonlawyers, are affected by the mandates through this intermediate step. However, in most cases the juvenile court is organized in a manner which reduces the actual change a mandate requires.

One way in which due process may change court conduct is by altering the flow of information. For example, a strict use of procedures may eliminate from consideration at adjudication evidence about the juvenile's background. The problem with the information approach is that in juvenile courts the sources of information are more numerous than those controlled by the law. The intake stage, especially, is crucial in this respect. Much information, perhaps even a plea of guilty, is passed to probation officers at this stage. No matter how active lawyers are at adjudication, they cannot counteract the fact that necessary information for a guilty verdict has usually been collected at an earlier stage.

Along with the problem of access is the problem of response. Regardless of information, the judge is the individual who can make the final decision. He can commit youth even if all evidence has been favorable, if he so desires. It may be possible to reduce such discretion slightly through a very active group of lawyers who use precedent to point out inequities in verdicts, but such activity is unlikely to occur repeatedly among lawyers who spend considerable time in front of one judge.

An impact might also occur if judges support a mandate and act in a manner that permits impact to develop. In fact, in some instances impact does occur when judges have favorable images of due process. However, across all courts the favorable images are not sustained. Juvenile court judges historically were given considerable discretion over hearings, and apparently they do not favor a reduction in discretion. Judges seldom respond favorably to outside rules (Lemert, 1970).

5. PROCEDURAL JUSTICE AND PUBLIC INSTITUTIONS

In some respects the juvenile court may be a special institution. Judges have a wide amount of discretion, courts have numerous sources of information that a judge can use, and values clearly oppose the interference of law. The limited effects of due process in juvenile courts may be related to these special factors.

However, in two ways the results probably generalize to all public institutions. First, it is likely that from the standpoint of clients, key decisionmakers in public organizations generally have a large amount of discretion and many avenues of action. For example,

eligibility for public assistance appears to be accomplished by workers who can gather information in many ways and who are not accountable (Handler, 1973). Procedural due process thus may have dubious success in this case as well. Second, the volume orientation of many decision-makers may often oppose due process guarantees. The tendency for public bureaucracies to develop interests of their own if often noted (Selznick, 1957; Coleman, 1974).

Mechanisms of Impact

More important, the results concerning due process in juvenile courts are useful in specifying more general mechanisms by which laws impact organizations. These mechanisms should be useful in understanding the potential impact of legal measures in varying organizations and contexts.

Direct Effects may be defined as a change in behavior that does not involve compliance with the specific mandate, but involes a decision to agree with the spirit of a new regulation. This is the aspect of legal change specifically ignored in the present inquiry. In theory, at least, direct effects may be considerable. For example, many private clubs opened their doors to women before the Equal Rights Amendment or other legislation made it necessary; the trend in the law seems to have led some people to change practices.

Impact by Definition occurs when the desired change is identical to compliance. Thus in the case of juvenile court mandates some procedural protections, such as the right to have an attorney, may be considered a desirable social end, regardless of other consequences.

Impact by Atmosphere occurs when compliance with a law has other social effects, but only because key decisionmakers permit the expression of such effects. In the case of juvenile court due process mandates, judges who were favorable to due process mandates seem to have allowed more changes in the influence of defense attorneys than did judges who were not favorable (although it is possible that the changes would occur without judge's consent, making the backlash against change the actual impact by atmosphere).

Impact by Constraint occurs when compliance makes it difficult to engage in specific behaviors, and as a result new behavioral patterns must develop. For example, probation officers cannot as easily participate in adjudication hearings when due process mandates are in force because they do not have the necessary skills--the law constrains them from activity.

Impact by a Change in Decision-Rules occurs when compliance to a law directly alters the way in which decisions are made. For example, in theory due process mandates present judges with different types of evidence that should lead to different decisions. Unfortunately, this is not the case; judges are able to make decisions on outcomes disregarding information used at earlier stages.

The limited impact of due process mandates in juvenile courts (with the possible exception of unmeasured direct effects) can easily be explained in the framework of the mechanisms of impact. Impact by definition is limited because due process mandates are expected to act indirectly. The procedural reforms mandated are somewhat distant

from impacts such as a change in influence at hearings, making little such impact possible. Impact by atmosphere demands that the law encourages the formation of a set of values that support legal change. However, juvenile courts are quite resistant to most of the expected legal impacts. Impact by constraint occurs when procedures limit courses of action. While some such impact occurred due to the mandates, judges have too many options to expect procedures aimed at adjudication to lead to large changes. Impact by a change in decision rules demands some mechanism whereby compliance encourages or discourages actors from making certain choices, and due process mandates do not include such a mechanism.

The categories suggest that procedural reforms as a whole are poor vehicles for increasing the responsiveness of existing decision-making units within public institutions. It is reasonable to assume that most of these organizations have many complex procedures and values that make the indirect impact that due process mandates entail unlikely.

An example of the type of impact expected from due process reforms is reported in Zander's (1976) article concerning the Lessard v. Schmidt (1972) decision in Wisconsin. This decision provided for due process procedures in mental health commitments and required that the standard of danger to oneself or to others be the main criteria for commitment. But as Zander points out, courts adopted the new standards differentially. In one county full compliance resulted, and commitments were low. My own investigation reveals that the number of cases, if not the percent of commitments, clearly changed in this county as a result of the decision. On the other hand, a second county seemed to comply less. More important,

compliance did not strongly affect commitment outcomes in this instance. For example, the danger standard was applied, but the judge seemed to agree that almost all defendants who were legally insane were dangerous.

The difference between the two courts fits the mechanisms of impact well. Impact by atmosphere occurred in the first court because values were in keeping with reduced commitments. The latter court contained a strong parens patriae orientation that opposed such a reduction, and thus little change occurred.

The mental health issue supports the notion that other mechanisms of impacts seldom occur as a result of procedural reforms. The mandates do not specify outcomes so that the laws do not involve a large measure of impact by definition; changes in decision rules involve inducements that are not present; impact by constraint is limited because judges are still able to obtain information concerning insanity before deciding on danger; and for judges favoring high commitments this information is sufficient.

The evidence and theory suggest that due process mandates are most effective in a limited set of circumstances. When attitudes are favorable to change, or when decision alternatives are few and easily controlled, procedural reforms may significantly increase the responsiveness of public institutions. However, when alternatives are large and values are not appropriate, some other form of legal change may be more useful. Often it may be necessary to directly mandate outcomes, or at least offer methods of changing values (perhaps by altering the type of personnel involved) along with procedural alternatives.

NOTE

[1]These many factors are actually deduced from a theory of the stages of legal impact. See Sosin (1977) for the theoretical framework involved.

REFERENCES

Blumberg, A.S. 1967. Criminal Justice. Chicago: Quadrangle Books.

Cicourel, A.V. 1968. The social organization of juvenile justice. New York: John Wiley.

Coleman, J.S. 1974. Power and the structure of society. New York: Norton.

Emerson, R. 1969. Judging delinquents. Riverside, CA: Aldine Press.

Forer, L.G. 1970. No one will listen! How our legal system brutalizes the youthful poor. New York: The John Day Company.

Handler, J. 1973. The coercive social worker: British lessons for American social services. Chicago: Rand McNally.

Katz, D.; Gutek, B.; Kahn, R.; and Barton, E. 1975. Bureaucratic encounters. Ann Arbor: University of Michigan Press.

Lefstein, N.; Stapleton, V.; and Teitelbaum, L. 1969. In search of juvenile justice and its implementation. Law and Society Review 13:491-513.

Lemert, E.M. 1970. Social action and legal change: revolution within the juvenile court. Chicago: Aldine.

National Assessment of Juvenile Corrections. 1976. Brought to justice? Juveniles, the courts, and the law. Ann Arbor.

Piven, F.F. and Cloward, R. 1971. Regulating the poor. New York: Pantheon.

Platt, A. 1969. The child savers: the invention of delinquency. Chicago: University of Chicago Press.

Roth, J.A. 1972. Some contingencies of the moral evaluation and control of clientele: the case of the hospital emergency service. American Journal of Sociology 77:839-56.

Scheff, T.J. 1966. Being mentally ill: a sociological theory. Chicago: Aldine.

Selznick, P. 1957. Leadership in administration. Evanston, Ill.: Row and Peterson.

_____. 1969. Law, society and industrial justice. New York: Russell Sage Foundation.

Skolnick, J. 1966. Justice without trial: law enforcement in a democratic society. New York: John Wiley and Sons.

Sosin, M. 1976. Staff perceptions of goal priorities. In Brought to justice? Juveniles, the courts and the law. National assessment of juvenile corrections. Ann Arbor.

_____. 1977a. Controlling organizations through law: due process mandates and diversion grants in juvenile courts. Ph.d. dissertation, University of Michigan.

_____. 1977b. Toward a theory of legal impact: some perspectives on compliance. Institute for Research on Poverty Discussion Paper #389-77. Madison, Wisconsin.

Stapleton, W.V. and Teitelbaum, L. 1972. In defense of youth: a study of the role of counsel in American juvenile courts. New York: Russell Sage Foundation.